

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.
SIXTH DIVISION**

DISTRICT COURT

Linda J. Reca :
 :
v. : **A.A. No. 12 - 222**
 :
Department of Labor and Training, :
Board of Review :

ORDER

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED

that the Findings & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the instant appeal is hereby **DISMISSED** for lateness.

Entered as an Order of this Court at Providence on this 19th day of December, 2012.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
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FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Ms. Linda J. Reca urges that the Board of Review of the Department of Labor and Training erred when it affirmed a Referee's decision dismissing Ms. Reca's appeal from the Department's decision denying her unemployment benefits because she failed to prosecute. Jurisdiction to hear and decide appeals from decisions made by the Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. Unfortunately, this Court will not be able to address

the merits of the instant appeal: because claimant submitted her complaint after the applicable appeal period had expired, I must recommend her appeal be dismissed.

I. TRAVEL OF THE CASE

The travel of the case may be briefly stated thusly: Ms. Reca, who was employed at Wal-Mart, was terminated; she filed a claim for unemployment benefits. On January 3, 2012 the Director issued a decision denying benefits to Ms. Reca pursuant to Gen. Laws 1956 § 28-44-17, which bars benefits to those workers who separate from their employment without good cause. Claimant's appeal was received by the Board of Review (for assignment to a referee) on January 9, 2012.

After conducting a hearing on February 7, 2012, Referee John Costigan issued a decision that same day in which he dismissed claimant's appeal for want of prosecution because Ms. Reca had failed to appear. Decision of Referee, February 7, 2012, at 1. Claimant filed an appeal on March 14, 2012, after the expiration of the 15-day appeal period found in Gen. Laws 1956 § 28-44-46. Nevertheless, the Board allowed her late appeal and ordered the case to be scheduled for hearing before a referee. Board of Review Decision, April 27, 2012, at 1.

A hearing was set before Referee Carl Capozza on May 21, 2012. Notice was sent to all interested parties. Referee's Decision, May 21, 2012, at 1. For a second time, the Claimant failed to appear; her appeal was dismissed for want of prosecution. Id. Claimant sought review of this decision and on August 23, 2012 the Board of Review unanimously issued a brief decision affirming the Referee's dismissal of claimant's appeal and adopting the Decision of the Referee as its own.

Thereafter, on November 1, 2012, claimant filed a pro-se complaint for judicial review in the Sixth Division District Court.

II. STANDARD OF REVIEW

The standard of review is provided by R.I. Gen. Laws § 42-35-15(g), a section of the state Administrative Procedures Act, which provides as follows:

42-35-15. Judicial review of contested cases.

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;

- (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Thus, on questions of fact, the District Court “* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’”¹ The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.² Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.³

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of the Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964) that a liberal interpretation shall be utilized in construing and applying the Employment Security Act:

* * * eligibility for benefits is to be determined in the light of the expressed legislative policy that “Chapters 42 to 44, inclusive, of this title shall be construed liberally in aid of their declared purpose which declared purpose is to lighten the burden which

¹ Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing R.I. GEN. LAWS § 42-35-15(g)(5).

² Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

³ Cahoone v. Bd. of Review of Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968). Also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

now falls upon the unemployed worker and his family.” G.L. 1956, § 28-42-73. The legislature having thus declared a policy of liberal construction, this court, in construing the act, must seek to give as broad an effect to its humanitarian purpose as it reasonably may in the circumstances. Of course, compliance with the legislative policy does not warrant an extension of eligibility by this court to any person or class of persons not intended by the legislature to share in the benefits of the act; but neither does it permit this court to enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

III. ANALYSIS

As stated above in the travel of the case, the Board of Review rendered its decision on August 23, 2012, but Claimant’s appeal was not submitted until November 1, 2012 — 70 days later — after the thirty day appeal period had expired. See Gen. Laws 1956 § 42-35-15(b). While Ms. Reca did not explain her tardiness in her complaint, any explanation, however meritorious, would have been of no avail; quite simply, the District Court is not authorized to extend the appeal period, which has been held to be jurisdictional. See Considine v. Rhode Island Department of Transportation, 564 A.2d 1343, 1344 (R.I. 1989)(“... the District Court does not possess any statutory authority to entertain appeals that are filed out of time.” 564 A.2d at 1344.). See also Dub v. Dept. of Employment Security Board of Review, A.A. No. 90-383 (Dist.Ct. 1/23/92) (SaoBento, J.)(“ * * * [complainant’s] failure to comply

with the procedural requirements of § 42-35-15(b) also invalidates her claim for relief.” Slip op. at 7-8. Emphasis added). As a result, Ms. Recca’s appeal must be dismissed.

CONCLUSION

Upon careful review of the record in this matter, I must recommend that the instant complaint for judicial review be DISMISSED because it was filed after the expiration of the prescribed appeal period.

_____/s/_____
Joseph P. Ippolito
MAGISTRATE

DECEMBER 19, 2012

